

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BK TRUCKING CO., and EAGLE VALLEY SOUTH, INC., AND LEROY BOLTON TRUCKING CO., on Behalf of Themselves and All Others Similarly Situated

Plaintiffs,

VS.

CATERPILLAR INC.,

Defendant.

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Civil Action No: 1:13-cv-02076-JBS-JS

ELECTRONICALLY FILED

Oral Argument Requested

Return Date: February 18, 2014

**NOTICE OF MOTION TO DISMISS
COMPLAINT PURSUANT TO FED. R. CIV. P.
12 (b)(6)**

COUNSEL:

PLEASE TAKE NOTICE that on Tuesday, February 18, 2014 at 9:00 a.m., or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant, CATERPILLAR INC. shall move before the Honorable Jerome B. Simandle, D.C.J., United States District Court, for the District of New Jersey, Mitchell H. Cohen U.S. Courthouse, 1 John F. Gerry Plaza, Room 6010, Fourth & Cooper Streets ,Camden, New Jersey 08101,for an Order Dismissing Counts VI, VIII and IX of the Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for the failure to state a claim upon which relief can be granted.

PLEASE TAKE FURTHER NOTICE that in support of this motion Defendant shall rely on the Memorandum of Law attached hereto.

PLEASE TAKE FURTHER NOTICE that Defendant Caterpillar Inc. requests oral argument unless no opposition is filed by counsel.

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Counsel for Defendant, Caterpillar Inc.

Dated: January 15, 2014